

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**LARRY W. FRANK and
SUSAN E. FRANK**

Plaintiffs,

VS.

ONEWEST BANK, FSB

Defendant.

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Case No. 4:12cv424

**MEMORANDUM ADOPTING IN PART REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 15, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant OneWest Bank, FSB's Motion for Summary Judgment and/or in the Alternative Motion to Dismiss Pursuant to Rule 12(c) (Dkt. 38) be GRANTED, that Plaintiffs take nothing by any of their claims, that all of Plaintiffs' claims be dismissed with prejudice, and that Defendant recover on its counterclaim against Plaintiffs.

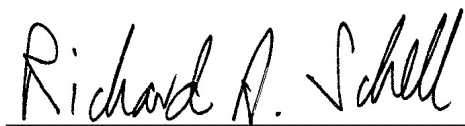
The court has made a *de novo* review of the objections raised by Plaintiffs (*see* Dkt. 59) and Defendant's objections (*see* Dkt. 58). As to Plaintiffs' objections, the Court finds that they are without merit. Defendant's objections do not object to the Court's recommendation that Plaintiffs' claims be dismissed and Defendant recover on its counterclaim. Instead, Defendant seeks clarification as to whether the relief recommended by the Magistrate Judge as to its counterclaim is for judicial or non-judicial foreclosure. Although it appears the language to which Defendant objects is substantively identical to Defendant's proposed summary judgment order (*see* Dkt.38-11), the

court finds that the Magistrate Judge recommends non-judicial foreclosure in his report and that any language in the report as to judicial foreclosure should be disregarded. With this clarification and amendment, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct as to the ultimate findings and, with the exception of the judicial foreclosure language contained in pages 22 through 25 of the report, adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendant OneWest Bank, FSB's Motion for Summary Judgment and/or in the Alternative Motion to Dismiss Pursuant to Rule 12(c) (Dkt. 38) is GRANTED, Plaintiffs shall take nothing by any of their claims and all of Plaintiffs' claims shall be dismissed with prejudice. Further, Defendant shall recover on its counterclaim against Plaintiffs and Defendant may foreclose under the security instrument and Texas Property Code § 51.0022.

IT IS SO ORDERED.

SIGNED this the 28th day of September, 2014.

A handwritten signature in black ink that reads "Richard A. Schell". The signature is written in a cursive, flowing style.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE